

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION**

HOMELAND INSURANCE COMPANY OF  
NEW YORK,

Plaintiff,

v.

CLINICAL PATHOLOGY  
LABORATORIES, INC., AND SONIC  
HEALTHCARE USA, INC.,

Defendants.

CIVIL ACTION NO. 1:20-CV-783

**DEFENDANTS' OPPOSED MOTION FOR LEAVE TO FILE A ONE-PAGE  
SUR-REPLY TO PLAINTIFF'S REPLY IN SUPPORT OF ITS MOTIONS TO COMPEL**

Defendants seek leave to file a one-page sur-reply to correct Plaintiff's misstatement, in its reply brief in support of its motions to compel, that Defendants' brief responding to those motions was "late." *See* Dkt. Nos. 157 & 158 at 2, n.1. Sur-replies are appropriate when they address misstatements made in reply. *See, e.g., Gonzalez v. CNL Wings*, No. 14-CA-886, 2015 WL 10818674, at \*6 (W.D. Tex. Mar. 24, 2015) (granting motion for leave to file a sur-reply "needed to correct a misstatement made [in] reply"); *Ranch v. City of San Antonio*, No. 10-CV-316, 2011 WL 13114906, at \*2 (W.D. Tex. Sept. 29, 2011) (granting motion for leave to file a sur-reply designed to "correct" statements made in reply brief).

Here, Plaintiff asserted in reply that Defendants' response was "late," even though Defendants filed it within the time constraints set forth by Local Rule CV-7(b). *See* Dkt. Nos. 157 & 158 at 2, n.1. Defendants brought Local Rule CV-7(b) to the attention of Plaintiff and requested that Plaintiff file a corrected brief. Plaintiff refused, and so Defendants now seek leave to file the one-page sur-reply that is attached as Exhibit B to address and rebut Plaintiff's incorrect assertion.

For the Court's convenience, a proposed order is attached at Exhibit A. Defendants conferred with Plaintiff in advance of filing this motion and Plaintiff indicated its opposition.

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Dated: October 24, 2022

Respectfully submitted,

By: /s/ Ernest Martin

Ernest Martin, Jr. [Bar No. 13063300]

Greg Van Houten\*

HAYNES AND BOONE, LLP

2323 Victory Avenue, Suite 700

Dallas, TX 75219

214-651-5651 Direct

214-200-0519 Fax

ernest.martin@haynesboone.com

greg.vanhouten@haynesboone.com

\*Admitted *Pro Hac Vice*

-and-

Mark T. Beaman [Bar No. 01955700]

Ryan Bueche [Bar. No. 24064970]

GERMER BEAMAN & BROWN PLLC

One Barton Skyway

1501 S Mopac Expy Suite A400

Austin, TX 78746

512-482-3504 Direct

512-472-0721 Fax

mbeaman@germer-austin.com

rbueche@germer-austin.com

**ATTORNEYS FOR DEFENDANTS**

### **CERTIFICATE OF CONFERENCE**

I hereby certify that, consistent with Local Court Rule CV-7(i), counsel for Defendants and counsel for Plaintiff conferred by e-mail regarding this motion prior to its filing and were unable to reach an agreement regarding the same.

/s/ Greg Van Houten  
Greg Van Houten

### **CERTIFICATE OF SERVICE**

I hereby certify that, consistent with Local Court Rule CV-5, a true and correct copy of the foregoing was sent to all parties of record pursuant to the Electronic Filing Procedures and the Federal Rules of Civil Procedure on this 24th day of October 2022.

/s/ Ernest Martin  
Ernest Martin